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Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-302

EAST BATON ROUGE PARISH
SCHOOL BOARD, ET. AL.,
Petitioners,

versus

CLIFFORD EUGENE DAVIS, JR., ET. AL.,
Plaintiffs,

DR. D'ORSAY BRYANT and
ALPHONSO O. POTTER,
Plaintiffs-Intervenors-Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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I.

QUESTION PRESENTED

Whether the appeals court remand with instructions for specific findings of fact and conclusions of law

violates, or conflicts with, any rules of law and/or standards enunciated by the United States Supreme Court.

II.

ARGUMENT

A. The appeals court remand for specific findings of fact is consistent with Rule 52(a)[1] of the Federal Rules of Civil Procedure and *Swann v. Charlotte-Mecklenburg Board of Education.*

The unanimous opinion of the appeals court below, reported at 570 F.2d 1260 (April 7, 1978), and reprinted in it's entirety in the Appendix to the petition for Writ of Certiorari, beginning at Page 15, held:

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1 RULE 52. Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

> ". . . In the absence of explicit and specific findings by the district court, we are unable to determine whether the school board has met its burden and whether these schools have been subjected to the close scrutiny that is required prior to declaring that a school system passes constitutional muster. We therefore vacate the district court's order dismissing the case and remand the case for further proceedings. See, e.g. *United States v. South Park Independent School District,* 566 F.2d 1221 (5th Cir. 1978) (emphasis added). . . ."

It is respectfully submitted that the above holding is fully consistent with the letter and spirit of Rule 52(a) of the Federal Rules of Civil Procedure as interpreted and applied by this court in *Dalehite v. United States,* 346 U.S. 15, 24 N. 8 (1953), and followed by the appeals court below in the instant case, and others. See, e.g., *Hydrospace-Challenger, Inc. v. Tractor/MAS, Inc.,* 520 F.2d 1030 (1975).

In *Dalehite,* this court stated:

> ". . . The well-recognized difficulty of distinguishing between law and fact clearly does not absolve district courts of their duty in hard and complex cases to make a studied effort toward definiteness. Statements conclusory in nature are to be eschewed in favor of statements of the preliminary and basic facts

on which the District Court relied. . . . Otherwise, their findings are useless for appellate purposes. . . ." at Page 24.

Additionally, this court required in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), that in a school system, such as East Baton Rouge Parish, with a history of state-imposed segregation of the races must be subjected to close judicial scrutiny in converting to a unitary public school system. A fortiori, the requirement for specific, explicit findings of fact and conclusions of law is a necessary predicate to full appellate review.

B. The appeals court remand with instructions is consistent with the requirement that a school system with a long history of state-imposed segregation of the races, be subjected to close judicial scrutiny in the dismantling process.

At this point the respondents feel constrained to point out that this school system is not one where mandatory segregation of the races in public education has long since ceased. *Dayton Board of Education v. Brinkman*, 433 U.S. 406. Until 1957 state law required that the Louisiana public school systems be operated on a segregated basis. *United States v. DeSoto Parish School Board*, 574 F.2d 804; and see also this court's decision in *Garner v. Louisiana*, 368 U.S. 157, 179 (1961).

Historically, the East Baton Rouge Parish School System has contained racially identifiable and traditional one-race schools. The system is one characterized, generally, by a "feeder system", wherein elementary school children (Grades 1-6) pass on to junior high (Grades 7-9) and ultimately to high school (Grades 10-12).

McKinley High School was built for black children in the early 1920's and, although it's physical location has changed within a thirteen block area over the past fifty years, no white students in any measurable or significant numbers have ever attended. McKinley Senior High School and it's concomitant junior high and multiple elementary feeder schools remain, today, very much as they have been over the years, over ninety-eight percent (98%) black student enrollment.

Capitol High School was built for black children in the early 1950's. Over the years since it's opening, no white students in any measurable or significant numbers have ever attended Capitol. Capitol Senior High, and it's junior high school and multiple elementary feeder schools remain, today, very much as they have been over the years, over ninety-eight (98%) black student enrollment.

Scotlandville High School was built for black children in the late 1950's. Over the years since it's opening, no white students in any measurable or significant numbers have ever attended Scotlandville. Scotlandville Senior High and it's junior high school and multi-

ple elementary feeder schools remain, today, very much as they have been over the years, over ninety-eight percent (98%) black student enrollment.

Chaneyville High School was built in the late 1950's for black children. Over the years since it's opening, no white students in any measurable or significant numbers have ever attended Chaneyville High School. Chaneyville High School and it's junior high school and elementary feeder schools remain, today, very much as they have been over the years, over ninety-eight percent (98%) black student enrollment.

The preceding observations represent only a general analysis of four (4) of the five (5) historically black high schools and their "feeder" schools. Post 1970, one high school, Northwestern, was changed to a middle school. Between them, they account for well over sixty (60%) percent of the system's black students in enrollment. And, under the current operation they will never be exposed to a desegregated education.

Succinctly, the United States Court of Appeals for the Fifth Circuit has fulfilled it's role as mandated by this Court in *Brown v. Board of Education*, 349 U.S. 249 (1955) (Brown II) and *Swann*, supra, in requiring the district court to make specific and explicit findings of fact and conclusions of law. It's opinion clearly articulates it's paramount concern with the continuing vestiges of state-imposed segregation, as evidenced by, inter alia, the presence of numerous one-race and sub-

stantially one-race schools. Further, it must also be assumed that the appeals court's decision is also bottomed on it's knowledge that the East Baton Rouge Parish School Board has a history of evading it's affirmative duty to eradicate all vestiges of racial segregation within its system. See, *Davis v. East Baton Rouge Parish School Board*, consolidated with *United States v. Jefferson County Board of Education*, 380 F.2d 385 (5th Cir. 1967) (en banc).

CONCLUSION

Therefore, it is respectfully submitted that the decision of the United States Court of Appeals for the Fifth Circuit is eminently correct and that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE

I hereby certify that three copies of the above and foregoing Opposition to the Petition for Writ of Certiorari were mailed, postage prepaid, to John F. Ward, Jr., 1111 South Foster Drive, Suite C, Post Office Box 65236, Baton Rouge, Louisiana 70896.

New Orleans, Louisiana, this ____ day of December, 1978.

MURPHY W. BELL